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P&G Case AA432

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of :
Brian Francis Gray, et al. : Confirmation No. 5838
Serial No. 10/009,087 : Group Art Unit 1615
Filed November 8, 2001 : Examiner S.L. Howard

For Absorbent Article With Skin Care Composition

BRIEF ON APPEALS

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

Enclosed, pursuant to 37 C.F.R. 1.192(a), is Appellant's brief on Appeal for the above application. The Brief is being forwarded in triplicate.

Please charge the fee of \$320.00 pursuant to 37 C.F.R. 1.17(c) to Deposit Account No. 16-2480 for the filing of the brief in support of an appeal. The Commissioner is also authorized to charge any additional fees which may be required to this account. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

By Bridget D. Ammons
Bridget D. Ammons
Attorney or Agent for Applicant(s)
Registration No. 52,555
(513) 634-1873

Date: July 2, 2003

Customer No. 27752

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Brian Francis Gray, et al. : Confirmation No. 5838
Serial No. 10/009,087 : Group Art Unit 1615
Filed November 8, 2001 : Examiner S. L. Howard
For ABSORBENT ARTICLE WITH SKIN :
CARE COMPOSITION :

APPELLANT'S BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450
Dear Sir,

This is an appeal of Claims 1-10, currently pending in the above application. These claims were finally rejected by the Examiner in an Office Action dated April 23, 2003. A timely Notice of Appeal was submitted by the by Appellants on May 13, 2003. Appellants' brief is submitted in triplicate.

REAL PARTY IN INTEREST

This Application has been assigned to The Procter & Gamble Company of Cincinnati, Ohio. The Inventor(s), Gray, et al., assigned their interest to the Procter & Gamble Company in an assignment corresponding to application Serial No., 10/009,087 filed November 8, 2001.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences known to the Appellants, or known to Appellants' legal representative, that will directly affect the Board's decision in the present appeal.

STATUS OF CLAIMS

Claims 1-10 are pending in this application. Claims 1-10 have been rejected. Claims 1-10 are being appealed. A copy of Claims 1-10 on appeal appears in the attached Appendix A.

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STATUS OF AMENDMENTS

Appellants have not filed an amendment subsequent to the Final rejection of the claims. The Appellants are appealing from a Final rejection of the claims mailed on April 23, 2003 in which the Examiner considered the response to an Office Action mailed on February 3, 2003 unpersuasive.

SUMMARY OF INVENTION

The present invention relates to an absorbent article having a body surface and a garment surface. The absorbent article comprises a topsheet disposed at the body surface, a backsheet disposed at the garment surface, and an absorbent core disposed therebetween. At least a portion of the absorbent article is provided with a skin care composition. The absorbent article has a preferential acquisition zone and a skin care zone. The preferential acquisition zone covers at least a portion of the vulva of the wearer when the absorbent article is applied to the wearer's body. The skin care zone is provided with the skin care composition of a greater basis weight than the preferential acquisition zone.

ISSUES

1. Whether Claims 1-3, and 5-10 are unpatentable under 35 U.S.C. § 103(a) as being obvious over WO 99/12530 A.

GROUPING OF CLAIMS

Claims 1-10 are within the same patentable grouping and will stand and fall together.

ARGUMENTS

Whether Claims 1-3, and 5-10 are unpatentable under 35 U.S.C. § 103(a) as being obvious over WO 99/12530 A.

Claim 1-3, 5-10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 99/12530A.

The Applicants respectfully traverse the rejection because the reference does not teach or suggest all of Applicants' claim limitations and thus, does not establish a *prima facie* case of obviousness.

The Office Action states that WO 99/12530 discloses absorbent articles that comprise a topsheet, a backsheet and an absorbent core therebetween, a skin care zone that is provided with a

skin care composition. The Office Action contends that WO 99/12530 teaches that the acquisition zone may comprise lower than average basis weight zones. As well, the Office Action contends that WO 99/12530 teaches the application of differing basis weights of the skin care composition to various zones of the absorbent article. Thus, the Office Action contends that the reference makes the Applicants' invention obvious. Contrary to the Examiner's position, however, the WO 99/12530 does not render obvious the Appellants' present invention.

If one looks to the Appellants' invention and the reference as whole, it is submitted that WO 99/12530 does not make Appellants' invention obvious because the reference does not teach or suggest each and every element within independent Claim 1. The Appellants' present invention provides for an absorbent article having a body surface and a garment surface. The absorbent article comprises a topsheet disposed at the body surface, a backsheet disposed at the garment surface, and an absorbent core disposed therebetween, and at least a portion of the absorbent article is provided with a skin care composition. The Appellants' present invention has a preferential acquisition zone and a skin care zone. The preferential acquisition zone covers at least a portion of the vulva of the wearer when the absorbent article is applied to the wearer's body. The skin care zone is provided with the skin care composition of a greater basis weight than the preferential acquisition zone.

The contention that WO 99/12530 teaches the application of differing basis weights of the skin care composition to various zones of the absorbent article is wholly unsubstantiated. WO 99/12530 discloses a method for maintaining and/or improving skin health of a wearer in the area covered by an absorbent article. The method disclosed in WO 99/12530 comprises the steps of (a) applying to the wearer an absorbent article having a skin care composition that provides a therapeutic and/or protective skin benefit upon transfer to the skin; (b) transferring to the wearer at least a portion of the skin care composition during wear; and repeating steps (a) and (b) with one or more additional articles with sufficient frequency to maintain or improve the health of the skin in the area covered by the absorbent article. WO 99/12530 discloses that the absorbent core's configuration and construction can be varied by using lower than average basis weights of material in the absorbent core (See WO 99/12530 page 23, lines 1-5). However, WO 99/12530 fails to teach or suggest the use of differing basis weights of skin care compositions. Moreover, WO 99/12530 fails to teach or suggest the application of differing basis weights of the skin care compositions to various zones of the absorbent article. Thus, WO 99/12530 fails to teach or suggest every element of the present invention and hence, does not establish a prima facie case of obviousness. Therefore, WO 99/12530 does not render independent Claim 1 unpatentable under 35 U.S.C. § 103.

SUMMARY

In view of all of the above, Appellants respectfully submits that Claims 1-3 and 5-10 are not rendered obvious under 35 U.S.C. § 103 (a). Accordingly, Appellants respectfully request the Board of Patent Appeals and Interferences to reverse the Examiner's rejections, and remand with directions to allow all of the claims of the present application.

Respectfully submitted,

By Bridget D. Ammons
Bridget D. Ammons
Attorney for Applicant(s)
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(513) 634-1873

Date: July 2, 2003
Cincinnati, OH

Customer No. 27752

APPENDIX

1. An absorbent article having a body surface and a garment surface, the absorbent article comprising a topsheet disposed at the body surface, a backsheet disposed at the garment surface, and an absorbent core disposed therebetween, at least a portion of the absorbent article being provided with a skin care composition, characterized in that

the absorbent article has a preferential acquisition zone and a skin care zone, the preferential acquisition zone covering at least a portion of the vulva of the wearer when the absorbent article is applied on the wearer's body,

the skin care zone is provided with the skin care composition of greater basis weight than the preferential acquisition zone.
2. The absorbent article of Claim 1 wherein the preferential acquisition zone is provided with the skin care composition of not greater than 20 g/m².
3. The absorbent article of Claim 2 wherein the preferential acquisition zone is not provided with the skin care composition.
4. The absorbent article of Claim 1 wherein the skin care composition is provided on the topsheet of the preferential acquisition zone, wherein the acquisition rate of the portion of the topsheet which is provided with the skin care composition is not less than 70 % of the topsheet before the skin care composition is applied.
5. The absorbent article of Claim 1 wherein at least a portion of the skin care zone is provided with a skin care composition of between 0.1 g/m² and 100 g/m².
6. The absorbent article of Claim 1 wherein the absorbent article has a main body portion, the main body portion having at least three sections, the three section comprising a first end section, a second end section, and a central section which is disposed between the first end section and the second end section, wherein the preferential acquisition zone includes at least a portion of the central section.

7. The absorbent article of Claim 6 wherein the skin care zone includes at least a portion of the first end section or at least a portion of the second end section.
8. The absorbent article of Claim 7 wherein the preferential acquisition zone is defined by a transverse width and a longitudinal length, wherein the width is between 10 mm and 80 mm and the length is between 20 mm and 120 mm.
9. The absorbent article of Claim 1 wherein the absorbent article has flaps extending laterally outwardly, wherein the skin care zone includes a portion of the flap which is folded during the use of the absorbent article.
10. The absorbent article of Claim 1 wherein the absorbent article has a peripheral portion to define the outline of the absorbent article, wherein the skin care zone include at least a portion of the peripheral portion.